IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2613 OF 2004

Dr. Shashikant Dattatray Karnik ...Applicant

Versus

The State of Maharashtra ...Respondent

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Ms Shantala Matti i/b Shri. Satish Manshinde with Shri. Sanjay Nangre with Ms. Rajeshri Gadhavi for the applicant.

Shri. A.S. Gadkari, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 15TH SEPTEMBER, 2004

P.C.:-

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The applicant is seeking bail in C.R. No. 33 of 2002 registered at Anti Corruption Bureau, Mumbai. The said C.R. is registered under Sections 409, 480, 420, 465, 466, 467, 468, 471, 474, 477, 380, 381, 457 r.w. section 120-B and 201 read with section 34 of I.P.C. and sections 13 (1) (d) of the Maharashtra Prevention of Corruption Act and sections 5, 7 and 8 of Maharashtra Prevention

of Malpractices at University, Board and other specific Examinations Act, 1982. The said case is commonly known as the "MPSC SCAM".

3. The applicant had earlier preferred an application for bail before this Court being Criminal application No. 1482 of 2003. By detailed speaking order the said application came to be rejected by this Court. Thereafter, the applicant had preferred criminal application No. 3004 of 2003. The said application also came to be rejected by this Court. Thereafter, the present application has been preferred. The changed circumstances which have been relied upon for preferring the present application are that four accused persons i.e. Hukumsingh Bhati, Vishwanath Kelkar, Jaya Kadam and Sayalee Joshi have been granted bail by this Court.

4. I have carefully perused the order dated 11.7.2003 whereby Hukumsingh Bhati came to be released on bail. In the said order it is clearly mentioned "None of the candidates have stated that he had acquired any amount from them". It is also observed that "It appears that there is no evidence against him". However, in the present case, it cannot be said that there is no material against the present applicant. There is sufficient

material to show the involvement of the applicant, which material is reflected in the order dated 23.4.2003 whereby the application for bail of the applicant came to be rejected by me. Thus, it is clear that the case of the co-accused Hukumsingh Bhati and the present applicant is not similar and the applicant cannot be granted bail on that ground.

5. I have perused the order dated 2.12.2003 whereby co-accused Vishwanath Kelkar was granted bail by this Court. On perusal of the said order and on perusal of the material in the present case, it cannot be said that the case of Vishwanath Kelkar and the present applicant is in any way similar. Thus, on this ground also the applicant cannot claim parity.

6. I have perused the order of this Court whereby Mrs. Jaya Baban Kadam came to be granted bail. On perusal of the order, it is seen that Mrs. Jaya Kadam was granted bail on the ground that she was a lady and her only role was that she assisted her husband in distribution and investment of assets collected by her husband Baban Kadam by taking bribe or illegal money from the students appearing for the M.P.S.C. examinations. In such case, the role of Mrs. Jaya Kadam and the present applicant

cannot be said to be similar.

7. I have also perused the order whereby Mrs. Sayalee Joshi came to be granted bail by this Court. In the said order, it is clearly reflected that nothing was argued on the merits of the case by both the sides. Mrs. Sayalee Joshi came to be granted bail only on technical point that no sanction to prosecute was awarded in her case. On this technical ground also the applicant cannot claim parity, moreover no such ground has been argued on behalf of the applicant. Thus, the applicant cannot claim parity with any of the four accused who have been granted bail in this case.

8. Thereafter, it is submitted on behalf of the applicant that he has been in custody for about 20 months and hence the applicant should be released on bail. It is submitted that only on account of the accused being in custody for one year, the Supreme Court has granted bail. Reliance has been placed on the decision dated 12.1.2004 of the Apex Court in the case of **Ravindra Pal Singh Sindhu Vs. State of Punjab and another [SLP (Crl.) No. 276 of 2003]** wherein it is stated that the petitioner is in custody since 21.7.2002, having regard to the period he has undergone, we are inclined to grant bail. However, the learned A.P.P. has placed

reliance on the decision of the Supreme Court in the case of Avinash T. Sanas who is the co-accused of the present applicant. The learned A.P.P. has submitted that though the co-accused Avinash Sanas was also in custody for more or less a similar period as the present applicant, the Special leave petition preferred by the said co-accused Avinash Sanas against the order of this Court rejecting his bail application came to be dismissed by the Supreme Court by order dated 30.7.2004. The said SLP is Numbered as SLP (Crl.) 511 of 2004. Looking to all these facts, I am not inclined to release the applicant on bail even on the ground that he has been in custody for about 20 months.

9. It is stated that the applicant has some medical problems and hence, he may be granted bail on that ground. However, the learned advocate for the applicant has not stated that the applicant is serious or that he requires immediate medical attention. In my view, this ground also cannot be a good ground to release the applicant on bail. Should the applicant require any medical treatment, the jail authorities shall provide him with the necessary facilities in jail hospital and if the facilities there are not adequate, the applicant may be taken to J.J. Hospital which is a reputed Government Hospital.

10. It is to be borne in mind that the applicant is an influential person and he had held an important constitutional post, in such case it is rightly apprehended by the prosecution that if the applicant is released on bail, the applicant may tamper with the prosecution witnesses. Looking to all these facts, I do not think that this is a fit case to grant bail to the applicant. Application is rejected.

11. Authenticated copy of this order be supplied to the parties.